87-957

Supreme Court, U.S.
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No. .....

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1987

TVL CORPORATION,
Petitioner,
VS.
SPANISH INTERNATIONAL COMMUNICATIONS CORPORATION,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIAN O'NEILL
(Counsel of Record)
BRIAN C. LYSAGHT
FREDERICK D. FRIEDMAN
O'NEILL & LYSAGHT
A Partnership Including
Professional Corporations
100 Wilshire Boulevard
Suite 700
Santa Monica, California 90401
Telephone: (213) 451-5700
Attorneys for Petitioner
TVL Corporation

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QUESTION PRESENTED

Whether the court of appeals erred in upholding the district court's ruling that petitioner, one of two final bidders for a company being sold under the auspices of the district court as part of the settlement of a shareholders' derivative suit, could not intervene as of right in the derivative suit where petitioner alleged gross improprieties in the conduct of the bidding process.

PARTIES IN THE COURT OF APPEALS

In addition to the parties named in the caption, the parties in the court of appeals included the plaintiffs in the underlying derivative action, Fouce Amusement Enterprises, Inc. and Metropolitan Theatres Corporation, and the individual defendants in that action, Reynold V. Anselmo, Emilio Nicolas, Sr. and John Pero. In addition, Hallmark Cards, Inc. and First Capital Corporation of Chicago jointly appeared as *amicus curiae* in the court of appeals.

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Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Petitioner TVL Corporation ("petitioner" or "TVL"), through its undersigned counsel, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit affirming the judgment of the United States District Court for the Central District of California denying TVL's motion to intervene in the underlying shareholders' derivative suit pending before the district court.

OPINIONS BELOW

The memorandum of the court of appeals affirming the district court's judgment denying TVL's motion to intervene is unreported and is set forth in Appendix A hereto. The order of the court of appeals denying TVL's petition for rehearing and rejecting its suggestion for rehearing *en banc* is also unreported and is set forth as Appendix B

hereto. The order of the district court denying TVL's motion to intervene, also unreported, is set forth as Appendix C hereto.

JURISDICTION

The memorandum of the court of appeals affirming the district court's denial of the motion to intervene was filed June 8, 1987. (App. A). TVL's petition for rehearing was denied by order filed August 14, 1987. (App. B). The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Rule 24, Federal Rules of Civil Procedure, is reprinted in Appendix D.

STATEMENT OF THE CASE

The issue raised in the case giving rise to this petition is whether the network of Spanish-language television stations controlled by respondent Spanish International Communications Corp. ("SICC"), the largest such network in the nation, serving millions of Hispanics in all the major domestic markets, will be sold to petitioner TVL, an entity composed of and controlled by leading Hispanic-American businessmen, or whether it will pass into the hands of a non-Hispanic conglomerate consisting of Hallmark Cards, Inc. ("Hallmark") and First Capital Corporation of Chicago.

The issue is posed in the context of a sale of SICC under the auspices of the district court as part of a mechanism for settling a long-pending shareholders' derivative suit brought by SICC's shareholders against SICC. In the resulting bidding process, after many other bidders were rejected or weeded out, TVL and Hallmark were the two finalists. TVL's proposed complaint-in-intervention in the derivative action alleged that its final bid

for SICC, in the amount of $320 million financed by some of the leading financial institutions in the country, was some $20 million higher than Hallmark's in terms of cash and some $100 million higher in terms of net aggregate consideration. TVL further alleged that it was victimized during the bidding process by a series of unfair and grossly improper practices on the part of SICC and its advisers.

This case began over a decade ago, on November 4, 1976, when shareholders of respondent SICC sued SICC and related entities and individuals in a shareholders' derivative action in United States District Court for the Central District of California, complaining, *inter alia*, of corporate mismanagement and waste. SICC is a Delaware corporation which owns and operates a network of Spanish language television stations throughout the United States.

After almost ten years of litigation, including a court trial, the parties agreed to a method of settling the suit, which the district court approved by its order dated May 16, 1986. Under the terms of the proposed settlement, the parties agreed to sell SICC under the auspices of the court. To that end, the court appointed a Sales Committee comprised of three SICC shareholders and/or officers and vested it with authority to negotiate with potential buyers. Subsequently, the Sales Committee retained a financial adviser, the firm of Bear, Stearns & Co., Inc., and a legal adviser, the firm of Jones, Day, Reavis & Pogue, in connection with these negotiations.

In June 1986, TVL aggressively entered the bidding process established by the district court. TVL is a company whose principals are prominent Hispanic-Americans who have been active in business and government affairs. TVL's President, Raul Tapia, is a 1975 graduate of the Harvard Law School and the holder of a Master's Degree

from Harvard's Kennedy School of Government. From 1979 to January 1981, Tapia was Deputy Special Assistant for Hispanic Affairs to President Carter. Upon leaving the staff of the White House, Tapia established the law firm of Tapia & Buffington in Washington, D.C. He is Chairman of the Board and President of television station KRRT-TV in Kerrville, Texas. TVL's other principals are Alfred R. Villalobos and David Lizarraga, Hispanic-American businessmen from Los Angeles, and Diego Ascensio, former United States Ambassador to Brazil and Colombia.

Hallmark also entered the bidding process, as did several other bidders. As the weeks passed, these bidders withdrew or were rejected and only TVL and Hallmark remained. TVL's final bid for SICC was better than Hallmark's by $20 million in cash and also included, as Hallmark's offer did not, considerable additional non-cash consideration. The Sales Committee deadlocked 2 to 1 in favor of Hallmark's offer and on July 18, 1986, the Committee applied to the district court to break the deadlock. The court, after a hurried *ex parte* hearing in chambers, awarded SICC to Hallmark.

TVL soon learned facts showing that the bidding process had been corrupted. Among other things, TVL learned that William Stiles, an officer of a company which is SICC's alter ego, along with a group of SICC station managers, including Emilio Nicholas, Jr., the son of one of the three members of the Sales Committee, had cut a deal with Hallmark under which Stiles and the managers stood to receive options to acquire as much as 20 percent of the shares of the acquiring entity, worth tens of millions of dollars, if Hallmark's bid was accepted. Thus, Stiles, who was a putatively neutral consultant to the Sales Committee during the selection process, was also working with and providing information to one of the

bidders participating in that process, in return for a promise of an equity interest in the new company.

Stiles' deal with Hallmark had other effects as well. As noted, one of the managers in league with Stiles in the latter's approach to Hallmark was Emilio Nicolas, Jr., son of Emilio Nicolas, Sr., one of the three members of the Sales Committee charged with deciding the winning bidder. Nicolas, Jr. stood to receive options to acquire as much as five percent of the stock of the new company if Hallmark prevailed. Yet Nicolas, Sr., in spite of this glaring conflict of interest, sat without challenge as a voting member of the Committee.

In addition, during the final phase of the bidding process, when TVL was on the verge of securing firm financing commitments for an offer involving $320 million in cash and some $80 million in other consideration — an offer far higher than any Hallmark ever came up with — the Sales Committee's financial advisers leaked inside information to Hallmark about TVL's bid. This immediately led Hallmark to give a "drop dead" ultimatum to the Sales Committee, threatening to withdraw from the process altogether if its bid was not accepted at once. Even when faced with the ultimatum, one of the members of the Sales Committee still favored TVL, necessitating a hurried trip on a Friday afternoon to the district court and an *ex parte* hearing where the court, faced with the classic "bird in the hand" dilemma and not apprised of many of the facts which have since been uncovered, ratified Hallmark's selection. In this way, TVL's bid of $320 million in cash and $80 million in non-cash consideration, backed by financing commitments from the soundest institutions in the country, lost out to Hallmark's bid, which was tens of millions of dollars less.

Upon learning that the bidding process had been thus corrupted, TVL moved to intervene in the district court

action pursuant to Rule 24(a) and (b), F.R.Civ.P., seeking to file a complaint against SICC for declaratory and injunctive relief. The motion was heard on October 6, 1986. At that time, the court granted TVL's motion to intervene but only to the limited extent of permitting TVL's counsel to make oral argument as to why the court should reconsider its earlier order awarding SICC to Hallmark. The court would not permit TVL's complaint-in-intervention to be filed. Counsel for TVL advised the court that TVL could not fully present its case without being permitted the full rights of an intervening party, including the right to take discovery and to cross-examine adverse witnesses. The court, however, did not permit TVL to participate any further in the action.

TVL filed a timely notice of appeal. On June 8, 1987, the court of appeals affirmed the district court's order denying TVL's motion to intervene. TVL's subsequent petition for rehearing was denied.

I

REASONS FOR GRANTING THE PETITION

THIS PETITION PRESENTS IMPORTANT QUESTIONS CONCERNING THE SCOPE OF INTERVENTION AS OF RIGHT IN THE FEDERAL COURTS AS TO WHICH THIS COURT HAS NOT SPOKEN.

TVL's motion to intervene in the district court was based on its detailed allegations of improprieties in the selection process established by the district court and its clear interest in having a fair opportunity to compete in what was in effect a court-sponsored auction. The court of appeals, in its brief memorandum, acknowledged that intervention was compelled under F.R.Civ.P. Rule 24(a)(2) where the proposed intervenor "claims an inter-

est relating to the property or transaction which is the subject of the action." The court then ruled that TVL had "no interest in the litigation in which it seeks to intervene, *i.e.,* the shareholders' derivative suit, or in SICC, the subject of that litigation." (App. A at 3). On the basis of this ruling, the court affirmed the denial of intervention as of right.

There is no question, and the court of appeals properly acknowledged, that Rule 24(a) is to be broadly construed in favor of applicants for intervention. *United States v. Stringfellow*, 783 F.2d 821, 826 (9th Cir. 1986), *rev'd on other grounds,* 107 S.Ct. 1177 (1987); *Westlands Water Dist. v. United States,* 700 F.2d 561, 563 (9th Cir. 1983); *Washington State Building & Construction Council v. Spellman,* 684 F.2d 627, 630 (9th Cir. 1982). Given this canon of construction, and the plain language of the rule, it defies logic to say that TVL, one of the two final bidders for SICC in a court-sponsored auction, did not have an interest in the property which is the subject of the suit sufficient to permit intervention as of right.

While the circuit courts have generally indicated that intervention is to be liberally granted, this Court has never articulated standards for determining what kind of "interest" suffices for intervention as of right and under Rule 24(a)(2). Indeed, this Court has addressed the question of the scope of the "interest" referred to in Rule 24(a)(2) on only two occasions since the Rule was amended in 1966 to create the subject provision.

In *Cascade Nat. Gas Corp. v. El Paso Nat. Gas. Co.,* 386 U.S. 133, 134-6 (1967), this Court noted that the 1966 amendments had injected "some elasticity" in the Rule and then went on to hold, without elaboration, that new Rule 24(a)(2) was "broad enough" to permit a gas distributor to intervene in an antitrust action involving the divestiture of a gas supplier by a competing gas

supplier. There was a vigorous dissent arguing that the intervenor's interest was too "general and indefinite" to justify intervention as of right. *Cascade Nat. Gas Corp. v. El Paso Nat. Gas. Co., supra,* 386 U.S. at 147.

The only other occasion on which this Court considered the meaning of Rule 24(a)(2)'s "interest" was *Donaldson v. United States,* 400 U.S. 529 (1971). In that case, the Internal Revenue Service ("IRS") brought a summons enforcement proceeding against a taxpayer's employers seeking to enforce a summons for the employers' records relating to the taxpayer. The taxpayer sought to intervene, claiming that the IRS agents were acting in bad faith. This Court held that the taxpayer did not have a sufficient "interest" under Rule 24(a)(2) to permit intervention. The Court stated, again without elaboration, that the "interest" required under the Rule was "a significantly protectible interest." *Donaldson v. United States, supra,* 400 U.S. at 531. To permit intervention in the case at bar, the Court stated, would be to "cast doubt upon and stultify the [IRS's] every investigative move." *Id.*

Thus, neither *Cascade* nor *Donaldson* addressed in any sustained or systematic way the proper scope of the "interest" sufficient to trigger intervention as of right under Rule 24(a)(2). Moreover, as the commentators have noted, both *Cascade* and *Donaldson* must be analyzed in light of their peculiar facts:

> "A broad reading of the intervention rule was thought necessary in *Cascade* in order to protect the public interest in effective competition. A narrow reading of the intervention rule was thought necessary in *Donaldson* in order to protect the public interest in prompt and effective investigation and enforcement of the revenue law."

7C Wright, Miller & Kane, *Federal Practice and Procedure,* Section 1908 at 270 (2d ed. 1986).

This case presents an opportunity for the Court to articulate standards than can guide the lower courts in applying Rule 24(a)(2) in a wide range of factual settings. In this case, the court of appeals apparently reasoned that, since TVL was not a shareholder of SICC and therefore had no interest in common with the other SICC shareholders who sued SICC in this action many years ago, TVL could not intervene as of right. But to say that only other shareholders may intervene in a shareholders' derivative suit — which is what the court of appeals in effect said — is to read the intervention rule far too narrowly and too technically.

The court of appeals' ruling was especially troubling given the status of the case at the time the ruling was made. Although this case began its life as a shareholders' derivative suit, by the spring of 1986 the chief business before the court — indeed the only business — was the supervision of the complicated process by which SICC was to be sold to the bidder making the best offer for the company. If there is any meaning to the repeated statement in the case law that "we are guided primarily by practical considerations" in ruling on requests to intervene, *United States v. Stringfellow, supra,* 783 F.2d at 826, then the only possible conclusion is that, from May 1986 on, the subject of this case was the sale of SICC in an auction overseen by the court. And TVL, which had participated in the auction process diligently and in good faith for many weeks, was one of the two finalists in that process, had an offer which was substantially higher than its non-Hispanic competitor, and which alleged in its complaint-in-intervention that it had been treated unfairly and prejudicially, certainly had an interest, as a practical matter, in developing a record as to its treat-

ment and asking to be declared the winning bidder. This is all that TVL sought to do in moving to intervene.

This case presents an appropriate vehicle by which this Court may set standards in an important, but neglected, area of federal civil procedure. At the same time, this Court can help right a serious wrong done to TVL, whose Hispanic principals merely seek — but so far have been denied — an opportunity to contest the court-sponsored sale of the premier Hispanic television network in the nation, by means of a bidding process which TVL contends was stacked against them.

CONCLUSION

The petition for writ of certiorari should be granted.

DATED: November 12, 1987

Respectfully submitted,

BRIAN O'NEILL
(Counsel of Record)
BRIAN C. LYSAGHT
FREDERICK D. FRIEDMAN
O'NEILL & LYSAGHT
A Partnership Including
Professional Corporations
100 Wilshire Boulevard
Suite 700
Santa Monica, California 90401
Telephone: (213) 451-5700

Attorneys for Petitioner
TVL Corporation

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FOUCE AMUSEMENT ENTERPRISES, INC.,
Plaintiff,

VS.

SPANISH INTERNATIONAL
COMMUNICATIONS CORPORATION,
Defendants-Appellees.

TVL CORPORATION,
Plaintiff-Intervenor-Appellant.

Appeal from the United States
District Court for the
Central District of California
Hon. Mariana R. Pfaelzer, Judge Presiding
Argued and Submitted: June 2, 1987

Before: KENNEDY, PREGERSON, and KOZINSKI,
Circuit Judges

No. 86-6533

D.C. No. 76-3451 MRP

MEMORANDUM*

TVL Corporation, an unsuccessful bidder in the judicially supervised sale of Spanish International Communications Corp. ("SICC"), seeks to intervene as a party in the stockholder's derivative action that the sale of SICC was intended to settle. TVL claims that it was unfairly

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*This memorandum may not be cited to or by the courts of this circuit, save as provided in Rule 21(c).

prevented from purchasing SICC. The district court denied TVL's motions to intervene. We affirm.

BACKGROUND

SICC owns and operates a network of Spanish language television stations throughout the United States. In 1976, shareholders of SICC brought a shareholder's derivative action against SICC in the Central District of California alleging mismanagement and waste. After almost ten years of litigation, the parties to the suit agreed to settle. Under the terms of the proposed settlement, the parties agreed to a court supervised sale of SICC. The settlement was approved by the district court. The settlement agreement provided for the appointment of a sales committee to consider purchase offers and provided that the final determination regarding the sale of SICC would have to be made unanimously by the committee's three members. After two months of bidding, the committee narrowed the field to two prospective purchasers, TVL and an investment group consisting of Hallmark Cards, Inc. and First Capital Corporation of Chicago ("Hallmark"). The three members of the sales committee could not agree on which offer to accept. Two voted for Hallmark and one for TVL. Pursuant to the sales agreement the deadlocked committee referred the decision to the district court. The district court selected Hallmark.

TVL moved to intervene as a party in the underlying shareholder's derivative suit in order to challenge the district court's sale decision. TVL claims that the sale process was unfair and discriminatory.

Although the district court did allow TVL to present its case in oral argument, it denied TVL's motion to intervene in the litigation.

STANDARD OF REVIEW

The district court's denial of intervention of right is reviewed *de novo. California v. Tahoe Regional Planning Agency*, 792 F.2d 779, 781 (9th Cir. 1986).

The district court's denial of permissive intervention is reviewed for abuse of discretion. *Id.* at 782.

ANALYSIS

I. Intervention of Right

Fed. R. Civ. P. 24(a) provides:

> Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute of the United States confers an unconditional right to intervene; or (2) *when the applicant claims an interest relating to the property or transaction which is the subject of the action* and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties. (Emphasis added.)

Although Rule 24(a) should be construed in favor of the applicant for intervention, *Westlands Water Dist. v. United States*, 700 F.2d 561, 563 (9th Cir. 1983), the district court properly denied TVL's motion for intervention of right. TVL has no interest in the litigation in which it seeks to intervene, i.e., the shareholders derivative suit, or in SICC, the subject of that litigation. *Old Colony Trust Co. v. Penrose Indus. Corp.*, 387 F.2d 939, 941 (3d Cir.) *cert. denied*, 392 U.S. 927 (1968).

II. Permissive Intervention

Fed. R. Civ. P. 24(b) provides:

> Upon timely application anyone may be permitted to intervene in an action . . . . (2) when an applicant's claim or defense and the main action have a question of law or fact in common . . . . In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

Even assuming that TVL's position as a bidder provides "common question" status, nothing in TVL's argument suggests that the district court abused its discretion by not allowing TVL to intervene. Allowing TVL to intervene to challenge the sale would have disrupted the court supervised settlement of this protracted litigation.

Moreover, the claims of a permissive intervenor usually must be supported by independent jurisdictional grounds. *Blake v. Pallen*, 554 F.2d 947, 955 (9th Cir. 1977). It is incumbent upon the intervenor to establish that an independent jurisdictional basis exists. *Id.* at 956. TVL has not attempted to establish independent jurisdiction.

We deny Appellee's request for attorney's fees and sanctions. AFFIRMED

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FOUCE AMUSEMENT ENTERPRISES, INC.,
Plaintiffs-Appellees,

vs.

SPANISH INTERNATIONAL COMMUNICATIONS CORPORATION,
Defendants-Appellees.

TVL CORPORATION,
Proposed Intervenor-Appellant.

No. 86-6533
D.C. No. 76-3451 MRP

ORDER

Filed: Aug. 14, 1987 Cathy A. Catterson, Clerk
U.S. Court of Appeals

Before: KENNEDY, PREGERSON, and KOZINSKI,
Circuit Judges.

The panel as constituted above has voted to deny TVL Corporation's petition for rehearing.

The full court has been advised of the suggestion for rehearing en banc and no judge of the court has requested a vote on the suggestion for rehearing en banc. Fed. R. App. P. 35(b).

The petition for rehearing is denied and the suggestion for rehearing en banc is rejected.

APPENDIX C

ANDREW W. ROBERTSON
LILLICK, MCHOSE & CHARLES
725 S. Figueroa Street, Suite 1400
Los Angeles, California 90017
Telephone: (213) 488-7100

Attorneys for Defendants
Spanish International Communications Corporation, Reynold V. Anselmo, Emilio Nicolas, Sr., and John Pero

RONALD L. FEIN
JAMES H. BERRY, JR.
SCOTT D. BERTZYK
JONES, DAY, REAVIS & POGUE
355 South Grand Avenue, Suite 3000
Los Angeles, California 90071
Telephone: (213) 625-3939

Special Counsel for
Spanish International Communications Corporation

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

FOUCE AMUSEMENT ENTERPRISES, INC.
and METROPOLITAN THEATRES CORPORATION,
Plaintiffs,
v.
SPANISH INTERNATIONAL COMMUNICATIONS
CORPORATION, et al.,
Defendants.

AND RELATED CASES.

No. CV 76 3451 MRP

ORDER ON MOTION BY TVL CORPORATION FOR LEAVE TO INTERVENE; ON MOTION BY THE HALLMARK GROUP FOR AFFIRMATION OF JULY 18, 1986 ORDER, OR IN THE ALTERNATIVE, FOR CONDITIONAL INTERVENTION; AND ON APPLICATION BY DEFENDANTS FOR AFFIRMATION OF JULY 18, 1986 ORDER

Hearing: October 6, 1986
Time: 10:00 a.m.

Filed: October 9, 1986

On October 6, 1986, the following motions and application came on for hearing before the Court: (1) The motion by TVL Corporation ("TVL") under Federal Rule of Civil Procedure 24 for leave to intervene in this action; (2) The motion by Hallmark Cards, Incorporated and First Capital Corporation of Chicago (collectively, "the Hallmark Group") for affirmation of the Court's July 18, 1986 Order ("the July 18 Order") approving the sale of Spanish International Communications Corporation ("SICC") to the Hallmark Group, or, in the alternative, for conditional intervention in this action; and (3) The application by defendants for affirmation of the July 18 Order.

In connection with the foregoing motions and application, the defendants, Special Counsel for SICC, TVL, and the Hallmark Group have submitted comprehensive memoranda of points and authorities, 36 declarations from participants in the sales process for the disposition of SICC, and other materials concerning the sales process and related proceedings pending before the Federal Communications Commission ("FCC"). In addition, extensive oral argument was presented at the October 6 hearing.

After carefully reviewing and considering the written submissions and the additional argument at the hearing, and after consideration of all proceedings had in this action, and being fully advised, the Court finds and concludes as follows:

1. The sale of SICC was conducted pursuant to a private settlement agreement in order to resolve this lengthy stockholders' derivative action and pending FCC proceedings relating to SICC. SICC and its stockholders were not obligated to sell SICC to any particular prospective purchaser.

2. Under the terms of the settlement agreement among the parties to this action and other signatory stockholders, SICC was to be sold to a party selected by a Sales Committee appointed by holders of 94% of SICC's stock upon such terms and conditions as the Sales Committee might establish. In the event that the Sales Committee failed to agree unanimously upon a buyer for SICC, the settlement agreement provided that the Court would select the buyer.

3. Pursuant to the sales process established by the Sales Committee in accordance with the settlement agreement, TVL and the Hallmark Group, among others, submitted offers to acquire SICC on various terms and conditions. The Sales Committee failed to reach unanimous agreement selecting any one offer, and the matter therefore was referred to the Court for decision on July 16, 1986. After having been fully informed by the Sales Committee and its legal and financial advisers, the Court selected by its July 18 Order the proposal of the Hallmark Group for the acquisition of SICC, subject to the delivery of a fairness opinion by the Sales Committee's financial advisers, Bear Stearns & Co., Inc. ("Bear Stearns"), and to the negotiation of an acquisition agreement satisfactory to the Sales Committee.

4. In making its July 18 Order, the Court concluded that the Hallmark Group's proposal should be accepted for several reasons, including:

A. The Hallmark Group had (and has) a net worth more than sufficient to consummate its offer, whether or not it chooses to obtain any financing, whereas TVL was a newly-formed corporation having no substantial assets and had not received firm commitments for the financing on which it was required to rely in connection with its offer to purchase SICC.

B. The offer of the Hallmark Group provided unlimited liability for breach backed by the net worth of the Hallmark Group, which substantially exceeded the proposed purchase price, whereas TVL's offer provided no guarantee of performance by or recourse for breach against a financially responsible party (other than the proposed agreement of Citicorp to sign the TVL acquisition agreement if its liability were limited to $15 million in liquidated damages).

C. By its terms, the Hallmark Group's offer was to expire as of the end of the day on July 18, 1986 and the Court, therefore, could have no assurance that the Hallmark Group offer (or any other offer) would be available in the event that the uncertainties in TVL's offer could not be remedied. In that connection, the Court was aware that in May 1986, a financially responsible offeror had made an offer for SICC higher that of TVL or the Hallmark Group; that the principal SICC stockholders instead chose to pursue the sales process in the hope of obtaining an even higher offer; and that that offeror thereafter did not make an offer in the sales process. The Court therefore did not deem it appropriate or desirable to subject the SICC stockholders and the settlement of this action to continue uncertainty or to expose the

stockholders to the risk of having no buyer and being forced to return again to the marketplace.

5. In accordance with the July 18 Order, a definitive acquisition agreement satisfactory to the Sales Committee was executed by SICC and the Hallmark Group, after delivery of the Bear Stearns fairness opinion, on July 19, 1986.

6. TVL filed an application for leave to intervene in this action on August 12, 1986 for the purpose of filing a complaint seeking an order vacating the proposed sale of SICC to the Hallmark Group and requiring SICC to be sold to TVL.

7. TVL's only interest in this proceeding is that of one of several unsuccessful offerors for SICC and, as such, TVL has no legally protectable interest in acquiring SICC and no stake or other interest in this stockholders' derivative action. Accordingly, TVL may not intervene in this action of right under Federal Rule of Civil Procedure 24(a).

8. Intervention by TVL at this late stage of the proceedings, after settlement of this lengthy and complex derivative action, would not further the interests of justice, would disrupt the orderly resolution of the action, would be adverse to the interests of SICC's stockholders, and would be contrary to the public interest in the settlement of disputes, both in the courts and before the FCC. Accordingly, TVL should not be permitted to intervene in this action under Federal Rule of Civil Procedure 24(b). Moreover, TVL has offered no independent jurisdictional basis for intervention under Rule 24(b).

9. Based on the record before the Court, there is no disputed issue of material fact relating to the sales process for the disposition of SICC. The sales process was fairly and reasonably conducted. The sales process was

not biased or tainted so as to prejudice TVL's participation in the process, to hinder TVL's ability to acquire SICC, or to favor unfairly the Hallmark Group. TVL's claims that the sales process was unfair or biased are without legal merit or factual basis.

10. The selection on July 18, 1986, of the proposal to acquire SICC by the Hallmark Group was fair and reasonable. No basis has been shown for contesting that selection. Even if the Court were to accept TVL's allegations as true, the Court still would affirm the July 18 Order for the reasons set forth in paragraph 4 above.

In accordance with the foregoing, the Court ORDERS as follows:

The application by TVL for leave to intervene in this action and the motion by the Hallmark Group for conditional intervention are denied. Although this Court has denied intervention under Rule 24, it has reviewed the declarations and other submissions of TVL and the Hallmark Group and has permitted them to be heard on the merits of TVL's claims and on defendants' application to affirm the July 18 Order, to the extent deemed necessary to assure the Court that its July 18 Order was well-founded. Having done so, the Court, for the reasons set forth above, affirms its July 28 Order in all respects. Court has reviewed TVL's proposed order and has con-

cluded that this order accurately reflects the Court's conclusions.

DATED: October 9, 1986

MARIANA R. PFAELZER
United States District Judge

HUGHES HUBBARD & REED

By: NORBERT A. SCHLEI
Attorneys for the Hallmark Group

Dated: October 7, 1986

LILLICK, MCHOSE & CHARLES

By: ANDREW W. ROBERTSON
Attorneys for Defendants

Dated: October 7, 1986

JONES, DAY, REAVIS & POGUE

By: JAMES H. BERRY, JR.
Special Counsel for Spanish International Communications Corporation

Dated: October 7, 1986

APPENDIX D

STATUTORY PROVISIONS INVOLVED

Rule 24, Federal Rules of Civil Procedure, provides:

Rule 24. Intervention

(a) Intervention of Right. Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute of the United States confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

(b) Permissive Intervention. Upon timely application anyone may be permitted to intervene in an action: (1) when a statute of the United States confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal or state governmental officer or agency or upon any regulation, order, requirement or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

(c) Procedure. A person desiring to intervene shall serve a motion to intervene upon the parties as provided in Rule 5. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought. The same

procedure shall be followed when a statute of the United States gives a right to intervene. When the constitutionality of an act of Congress affecting the public interest is drawn in question in any action to which the United States or an officer, agency, or employee thereof is not a party, the court shall notify the Attorney General of the United States as provided in Title 28, U.S.C. § 2403.

PROOF OF SERVICE BY MAIL

I am a citizen of the United States and a resident of the City and County of Los Angeles; I am over the age of eighteen years and not a party to the within action; my business address is: 1706 Maple Avenue, Los Angeles, California.

On November 12, 1987, I served the within Petition for a Writ of Certiorari in re: "TVL Corporation vs. Spanish International Communications Corporation" in the United States Supreme Court, October Term 1987, No. .....;

On the Parties in said action, by placing Three copies thereof enclosed in a sealed envelope with postage fully prepaid, in the United States post office mail box at Los Angeles, California, addressed as follows:

Michael T. Balaban, Esq.
Glassman & Browning
360 North Bedford Drive
Suite 204
Beverly Hills, California 90210

Gregory R. Oxford, Esq.
O'Melveny & Myers
400 South Hope Street
Suite 1500
Los Angeles, CA 90071-2899

Andrew Robertson, Esq.
Lillick, McHose & Charles
725 South Figueroa Street
Suite 1400
Los Angeles, California 90017

Frederick H. Stern, Esq.
16830 Ventura Boulevard
Suite 500
Encino, California 91436

Ronald L. Fein, Esq.
Jones, Day, Reavis & Pogue
355 South Grand Avenue
Suite 3000
Los Angeles, California 90071

Louis P. Petrich, Esq.
Leopold, Petrich & Smith
2049 Century Park East
Suite 3110
Los Angeles, California 90067

Norbert A. Schlei, Esq.
Hughes, Hubbard & Reed
555 South Flower Street
Suite 3700
Los Angeles, California 90071

Warren R. Stern, Esq.
Wachtell, Lipton, Rosen & Katz
299 Park Avenue
New York, New York 10171-0149

James H. Berry, Jr.
Wyman, Bautzer, Christensen,
Kuchel & Silbert
2049 Century Park East
Suite 1400
Los Angeles, California 90067

All Parties required to be served have been served.

I certify (or declare), under penalty of perjury, that the foregoing is true and correct.

Executed on November 12, 1987, at Los Angeles, California

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